



INTERIOR BOARD OF INDIAN APPEALS

Carris LaRocque, et al. v. Aberdeen Area Director, Bureau of Indian Affairs

29 IBIA 201 (06/13/1996)

Related Board case:
28 IBIA 67



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CARRIS LaROCQUE, MELVIN LENOIR,	:	Order Affirming Decision
BRUCE MORIN, LEE GOURNEAU,	:	
DOUGLAS DeLORME, and	:	
RAPHAEL DeCOUTEAU,	:	
Appellants	:	
	:	Docket No. IBIA 95-149-A
v.	:	
	:	
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 13, 1996

Appellants Carris LaRocque, Melvin Lenoir, Bruce Morin, Lee Gourneau, Douglas DeLorme, and Raphael DeCoteau seek review of a June 30, 1995, decision issued by the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning recognition of the members of the Tribal Council for the Turtle Mountain Band of Chippewa Indians (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

On November 8, 1994, the Tribe held an election for members of the Tribal Council. Appellants, as well as Matthew McLeod, Gaillard Peltier, and Twila Martin-Kekahbah, were elected to the Tribal Council, and Martin-Kekahbah was elected Chairperson. The Council was sworn into office on January 3, 1995. At a January 6, 1995, Tribal Council meeting, appellant Morin was elected to the position of Secretary-Treasurer. Peltier and appellant LaRocque were nominated for Vice-Chairman. When the vote for Vice-Chairman was tied, Martin-Kekahbah broke that tie, voting for Peltier.

The minutes of the January 6, 1995, meeting were not approved at the February 7, 1995, meeting. Appellants contended that the failure to approve the minutes rendered invalid the selection of Peltier as Vice-Chairman. ^{1/} Appellants moved to elect appellant LaRocque as Vice-Chairman. This action was approved with five votes for the motion, and three abstentions. No official action was taken, however, to remove Peltier.

At a March 9, 1995, Tribal Council meeting, a tribal member presented envelopes to Martin-Kekahbah which apparently contained petitions seeking the recall of appellants. Martin-Kekahbah gave the envelopes to Wannetta Bennett, the Chairperson of the Tribal Election Board, and asked her to act on them. There are two sets of minutes for this meeting. The set signed by Martin-Kekahbah shows that, after turning the petitions over to Bennett,

^{1/} It does not appear, however, that appellants refused to recognize appellant Morin as Secretary-Treasurer, or to recognize the validity of other actions taken at the Jan. 6, 1995, meeting.

Martin-Kekahbah adjourned the meeting and that she, Peltier, and McLeod left the meeting. The second set of minutes, signed by appellant LaRocque as Vice-Chairman, state that the meeting was not formally adjourned and that appellants continued it, enacting resolutions removing Martin-Kekahbah, Peltier, and McLeod, "not recognizing" a Tribal Election Board, and declaring invalid the recall petitions against themselves.

The administrative record contains minutes of several other meetings at which appellants were the only Council members present. These meetings were apparently conducted by appellant LaRocque as Vice-Chairman. Actions taken at the meetings attempted to remove Martin-Kekahbah, Peltier, and McLeod.

By letter dated April 6, 1995, the Area Director notified the Tribe that matters were pending which required the recognition of a tribal government for the purposes of carrying out the Federal government-to-government relationship with the Tribe. The Area Director recognized the individuals elected at the November 8, 1994, election, with Martin-Kekahbah as Chairperson, Peltier as Vice-Chairman, and appellant Morin as Secretary-Treasurer. The Area Director also stated that either the Chairperson or Vice-Chairman had to be present for a Tribal Council meeting to be valid. 2/

Based on her review of the recall petitions, Bennett scheduled a recall election for April 11, 1995. Appellants filed suit in the Turtle Mountain Tribal Court seeking to enjoin the recall election. The Tribal Court denied the requested injunction on April 10, 1995. LaRocque v. Bennett (Turtle Mountain Tribal Court). At the time briefs in this Departmental proceeding were filed, an appeal from the April 10, 1995, Tribal Court order was pending before the Appellate Court of the Turtle Mountain Tribe. The Office of the Field Solicitor has informed the Board that it is not aware that a decision has been issued in that appeal. No other party has notified the Board that the Tribal Court appeal has been concluded. Accordingly, the Board assumes that the appeal is still pending.

A recall election was held on April 11, 1995. Appellants were recalled in that election. Pursuant to Article VIII, Section 3, of the Tribal Constitution, the three remaining council members appointed persons to fill the vacancies created by the recall of appellants. 3/

2/ Present appellants appealed the Apr. 6, 1995, decision to the Board. The Area Director requested that that appeal be dismissed and the matter remanded to him because further tribal actions required him to revise his Apr. 6, 1995, decision. The request was granted. DeCouteau v. Acting Aberdeen Area Director, 28 IBIA 67 (1995).

3/ Article VIII, Sec. 3, states:

"The Tribal Council by an affirmative vote of the majority shall appoint a replacement to fill any vacancy of a district representative or other elected official, caused by removal, death, or resignation, provided the term of the replacement shall not extend beyond the next regular election regardless of the length of the unexpired term."

See also Sec. 13.1207 of the Turtle Mountain Tribal Code.

On June 30, 1995, the Area Director recognized the appointed council members, and repeated that the Chairperson or Vice-Chairman needed to be present for a Tribal Council meeting to be valid. This appeal is from the Area Director's June 30, 1995, decision.

Appellants contend that BIA does not have the statutory and/or administrative authority to interfere with the internal operations of a tribe, and should have allowed them to exhaust their tribal remedies before issuing a decision. Although the Board has repeatedly stated that intra-tribal disputes should be resolved in tribal forums, it has also recognized that the government-to-government relationship between the Federal government and the tribes may require BIA to make a decision concerning tribal leadership, and that, in making such a decision, BIA has authority to interpret tribal governing documents. In Bucktooth v. Acting Eastern Area Director, 29 IBIA 144, 149 (1996), the Board addressed BIA's authority in this regard:

Where an intra-tribal dispute * * * has not been resolved in a tribal forum, and BIA must know which individuals it will deal with in its government-to-government relations with the tribe, BIA may have no choice but to issue an interim decision [recognizing a tribal government]. See, e.g., Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983). In that case, the Eighth Circuit Court of Appeals held that BIA must recognize, conditionally, one of two competing tribal governments and that "[t]hat recognition should continue only so long as the dispute remains unresolved by a tribal court" 708 F.2d at 339.

Appellants challenged the validity of the recall election in Tribal Court. As noted above, that case is apparently still pending. Presumably, if the Tribal Court decides in appellants' favor, the recall election would be invalidated; and, if it decides against them, the recall election would stand. The Board has not been informed that appellants challenged the results of the recall election in Tribal Court. It is possible, however, that appellants might still be able to file an appeal in tribal court from the actual results of the recall election if they lose the pending appeal. In any case, it is clear that the recall election dispute has not been finally resolved in Tribal Court.

Despite the fact that appellants' tribal remedies had not been exhausted, the Area Director found there were matters pending which required that there be a recognized tribal government for Federal purposes. Under these circumstances, and under the decision in Goodface, the Board concludes that BIA had not only the authority, but also the responsibility, to recognize one of the competing tribal governments until such time as the matter could be resolved in tribal court. The Board fully expects that, if a tribal resolution to this dispute requires recognition of a different tribal government than the one presently recognized, the Area Director will take appropriate action, just as he did when the April 11, 1995, recall election required him to change his April 6, 1995, decision.

Appellants attack the recall election on the grounds that the petitions were not processed by the Tribal Council as they allege is required

by Section 13.1205 of the Turtle Mountain Tribal Code. That section provides in pertinent part: "Recall election shall be processed by the Tribal Council within fifteen (15) days after receipt of valid petition." Appellants contend that this section requires that the Tribal Council, and only the Tribal Council, receive and validate the recall petitions. They further argue that the petitions were not shown to them, and were not introduced in the Tribal Court proceeding.

Appellants again assert that because these substantive arguments are pending before the Tribal appellate court, the Area Director lacked authority to issue a decision. The simple answer to this argument is that, as discussed above, Goodface holds otherwise. See also Bucktooth; Gonzales v. Acting Albuquerque Area Director, 28 IBIA 229 (1995). When the Area Director issued his decision, appellants' arguments had been considered at the trial level in Tribal Court, and the Judge had refused to enjoin the recall election. The Area Director properly considered this fact in concluding that the recall election was validly held, even though the trial court's decision was subject to review at the appellate level. Furthermore, the Area Director's independent conclusion that the Tribal Council "processed" the petitions when Martin-Kekahbah asked the Chairperson of the Tribal Election Board to review them is a reasonable interpretation of Section 13.1205, which does not state how the Tribal Council must "process recall petitions. The Board concludes that the Area Director acted within his authority and reasonably in recognizing the results of the recall election.

The Board also affirms the Area Director's recognition of the appointment of new Tribal Council members. In making this decision, the Area Director interpreted Article VIII, Section 3, of the Tribe's Constitution as authorizing a majority of those Council members remaining in office to appoint replacement members, despite the general quorum requirement of Article VII, Section 2. ^{4/} Under the unusual circumstances in which a majority of the members of the Tribal Council were recalled from office at the same time, the Area Director's interpretation of Article VIII, Section 3, is not only reasonable, but also avoids the absurd result of rendering the tribal government totally inoperative.

Finally, the Board affirms the Area Director's conclusion that either the Chairperson or Vice-Chairman needed to be present for a Tribal Council meeting to be valid. In reaching this decision, the Area Director specifically relied upon a February 7, 1989, advisory opinion from the Chief Judge of the Turtle Mountain Tribal Court concerning the tribal officials having authority to conduct Tribal Council meetings. That opinion, which was issued long before the present dispute, examines the duties of each officer as specified in Article VI of the Tribal Constitution, and concludes that

[T]he wording in the Constitution clearly does not allow anyone except the Chairman, or in his absence, the Vice-Chairman

^{4/} Article VII, Sec. 2, provides that "[a] quorum shall consist of five (5) members and no business shall be conducted in the absence of a quorum."

to preside at a meeting, even when three (3) members of the council call a special meeting.

The Tribal Council does have "authority to regulate its own procedures, to appoint a Vice-Chairman, to act in the absence or disability of the Chairman,..." Article IV, Section 2.

However, the "authority to regulate its own procedures" does not, in my opinion, supersede the explicit wording that "the Chairman shall preside at all regular and special meetings" or that the Vice-Chairman's "only duty shall be to serve as presiding officer of the Council in the absence of the Chairman." * * *

My answer to your question is, therefore that the Secretary-Treasurer of the Council does not have the authority to call, conduct or preside at a regular or special meeting of the council in the absence of the Chairman and Vice-Chairman. The validity of such a meeting is questionable. [Emphasis in original.]

The Board has frequently stated that BIA must defer to a tribe's reasonable interpretation of its own governing documents. See San Manuel Band of Mission Indians v. Sacramento Area Director, 27 IBIA 204, 208 (1995); Shakopee Mdewakanton Sioux Community v. Acting Minneapolis Area Director, 27 IBIA 163, 169 (1995), and cases cited therein. The Chief Judge's advisory opinion is a reasoned analysis of the Tribal Constitution, and the Area Director's deference to that opinion was appropriate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Aberdeen Area Director's June 30, 1995, decision is affirmed. 5/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

5/ All arguments raised but not addressed were considered and rejected.